

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

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2003 DEC 15 P 12:48

U.S. DISTRICT COURT
DISTRICT OF MASS.

03 - 40280 - 1003

RAYMOND A. VEZINA,
Plaintiff

vs.

DEPARTMENT OF THE ARMY
and THE SECRETARY OF THE ARMY
Defendants

COMPLAINT

Parties

- 1) The Plaintiff, RAYMOND A. VEZINA, is retired as Adjutant General of the Army and Air National Guard of Massachusetts. He is a resident of North Grafton, Worcester County, Massachusetts and a citizen of the United States.
- 2) The Defendant, THE DEPARTMENT OF THE ARMY is a duly constituted agency of the United States of America.
- 3) The Defendant, THE SECRETARY OF THE ARMY, is the agency head of the Department of the Army and acts on behalf of the Department of the Army.

Jurisdiction

RECEIPT # 104239
AMOUNT \$ 150.00
SUMMONS ISSUED ☒
LOCAL RULE 4.1 ☒
WAIVER FORM ☒
MCF ISSUED ☒
BY DPTY. CLK. S. Jones
DATE 12-17-03

- 4) This court has jurisdiction over this matter pursuant to 28 U.S.C. §1332
- 5) Plaintiff is a citizen of the Commonwealth of Massachusetts. Defendant is a agency of the United States, and the amount in controversy exceeds the sum of \$50,000.00, exclusive of interest and costs.

Facts

- 6) On or about November 19, 1993 Raymond A. Vezina was appointed Adjutant General of the Massachusetts National Guard with the statutory grade of Major General by then Governor William F. Weld of Massachusetts.
- 7) On or about October 5, 1994 Congress Passed Reserve Officer Personnel Management Act (ROPMA) effective October 1, 1996 codified in 10 U.S.C. 14311.
- 8) On or about December of 1994, Under Secretary of Defense Lister issued a policy letter directing that General Officers appointed under the provisions of ROPMA and awaiting confirmation would be treated as though they had been appointed under the provisions of ROPMA.
- 9) On or about December of 1993 Raymond A. Vezina's name was placed on the Senate Confirmation list for promotion as a reserve General Officer of the United States Army and as General Officer of the Army National Guard of the United States.
- 10) Subsequent to the placing of Raymond A. Vezina's name on the Senate Confirmation list an allegation was made to the Department of the Army Office of the Inspector General that Raymond A. Vezina had engaged in various acts of wrongdoing.
- 11) On or about June, 1995, as a result of said allegations, Raymond A. Vezina's name was removed from the Senate Confirmation list pending the outcome of the Department of the Army Inspector General's investigation. No written notification of the removal and no written explanation detailing the allegations causing the removal from the Senate Confirmation list has been given to the Plaintiff.
- 12) Upon learning of the removal of his name from the Senate Confirmation list by telephone on or about June, 1995, Raymond A. Vezina requested that his name be reinstated to the list. Despite the requirement in ROPMA that a candidates name be reinstated to the Senate Confirmation list with 18 months of removal, unless there is Court action, the Plaintiff's name has not been reinstated from that time to the filing of this action.

- 13) On July 23, 1999 Raymond A. Vezina applied to the Army Board for Correction of Military Records in an effort to have his name restored to the Senate Confirmation list.
- 14) The Army Board for Corrections of Military Records has failed to act pursuant to Raymond A. Vezina's application.
- 15) Raymond A. Vezina has exhausted all administrative remedies available to him to have his name returned to the Senate Confirmation list for promotion as a Reserve General Officer of the United States Army and as a General Officer of the Army National Guard of the United States.
- 16) Over 7 years have elapsed since Raymond A. Vezina's name was removed from the Senate Confirmation list for promotion as a reserve General Officer of the United States Army and as a General Officer of the Army National Guard of the United States.

COUNT I VIOLATION OF THE PROVISIONS OF ROPMA

- 17) The Plaintiff incorporates and realleges the allegations of paragraphs 1 through 16.
- 18) By failing to restore Raymond A. Vezina's name to the Senate Confirmation list after a period of 18 months had elapsed from the time of removal in the absence of criminal charges being preferred or civilian criminal complaint being issued, the Department of the Army violated the provisions of ROPMA which statute confers a direct benefit on Raymond A. Vezina.

COUNT II VIOLATION OF AN AGENCY OR DPARTMENT DIRECTIVE

- 19) The Plaintiff incorporates and realleges the allegations of paragraphs 1 through 18.
- 20) By failing to restore Raymond A. Vezina's name to the Senate Confirmation list after a period of 18 months had elapsed from the time of removal in the absence of criminal charges being preferred or civilian criminal complaint being issued, the Department of the Army violated the directive issued by the Undersecretary of Defense directing the Department of the Army to treat

those officers appointed under the provisions of ROPMA as if they had been appointed under the provisions of ROPMA, which directive confers a direct benefit upon Raymond A. Vezina.

WHEREFORE, the Plaintiff, Raymond A. Vezina, requests that this Court issue an order instructing the Secretary of the Army to restore his name to the Senate General Officer Confirmation list, and that if promoted that Raymond A. Vezina receive retroactive pay from the date when the Plaintiff, pursuant to ROPMA, should have been promoted, and for the costs of the suit; and for such other and further relief as the Court deems just and proper in the premises.

Raymond A. Vezina
Plaintiff,
By his Attorney,

A handwritten signature in cursive script, appearing to read "Neil J. Berman", written over a horizontal line.

Neil J Berman
Berman & Shapiro
109 College Avenue
Somerville, MA 02144
(617) 628-1563
BBO #556-784

Date: 12-12-03

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Vezina, Raymond A.

(b) County of Residence of First Listed Plaintiff Worcester
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Neil J. Berman (617) 628-1563
109 College Avenue
Somerville MA 02144

DEFENDANTS

Department of the Army
The Secretary of the Army

County of Residence of First Listed

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 DEF Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4 DEF
Citizen of Another State ☐ 2 ☐ 2 DEF Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5 DEF
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 DEF Foreign Nation ☐ 6 ☐ 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395M) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rules/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

10 U.S.C. 14311 (R.O.D.M.A.) Failure to promote the Plaintiff

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

12-12-2003

Neil J. Berman

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) RAYMOND A. VEZINA V. DEPARTMENT OF THE ARMY AND THE SECRETARY OF THE ARMY

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

— I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

X II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.

*Also complete AO 120 or AO 121 for patent, trademark or copyright cases

— III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

— IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

— V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

NONE

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☒ NO ☐

1. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☐ Central Division ☒ Western Division ☐

2. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME NEIL J. BERMAN

ADDRESS 109 COLUMBIA AVENUE

TELEPHONE NO. SOMERVILLE MA 02144